

## CONTRACT FOR CITYWIDE SIDEWALK, TRAIL AND MINOR ROADWAY CONSTRUCTION

THIS CONTRACT ("Contract") is entered into on the 10 day of August, 2020, between the CITY OF GAINESVILLE, FLORIDA, a municipal corporation ("CITY"), and BLACKWATER CONSTRUCTION SERVICES, LLC ("CONTRACTOR"), a Florida limited liability company.

WHEREAS, the CITY desires to enter into a contract with CONTRACTOR for sidewalk, trail and minor roadway construction.

NOW, THEREFORE, CITY and CONTRACTOR agree as follows:

1. **TERM.** The term of this Contract shall be effective upon execution and shall continue for a period of three (3) years, unless extended by mutual agreement of the parties.

### 2. SCOPE OF SERVICES.

2.1 Contract Documents. CONTRACTOR shall perform construction of sidewalks, multi-use trails, bus stop improvements, and minor roadway projects, including associated concrete and asphalt paving, curbing, ramps, striping, signage, drainage/storm water elements, hardscaping, lighting, and landscaping, pursuant to the terms and conditions in the following documents, which if not attached, are referenced herein and made a part hereof as if fully contained herein (collectively the "Contract Documents"):

- a. This Agreement
- b. Addendum No. 1 dated January 28, 2020
- c. Addendum No. 2 dated February 11, 2020
- d. City of Gainesville Request for Qualifications (RFQ) No. DOMX-200017-SG dated January 28, 2020
- e. CONTRACTOR's Proposal dated February 25, 2020

In the event of conflict or inconsistency between the Contract Documents, the order of precedence for interpretation shall be the order in which the Contract Documents are listed above.

2.2 Individual Projects. The specific scope of services for individual projects will be mutually agreed to by the parties in separate Task Assignments. The Task Assignments may be amended as described herein.

2.3 Change of Scope and Times. Services performed at the CITY's request beyond those identified in the Task Assignment shall constitute changes which will be documented by a Change Order to be approved in writing by both parties before services are performed. If the CONTRACTOR is entitled by the Contract Documents to make a claim for an increase in Contract Amount or Times, notice of intent to file a claim shall be in writing. The Contract Amount or Times may only be changed by a Change Order.

- 2.4 Nothing in this Contract shall be construed to prohibit the CITY from awarding, authorizing, or directing work to be performed, whether identified in this Contract or otherwise, to firms other than CONTRACTOR.

### **3. TASK ASSIGNMENTS (Work Orders).**

- 3.1 Task Assignments. All services to be performed shall be authorized and performed in accordance with a written and jointly executed Task Assignment for each project for which services are requested. The Task Assignment shall reference this Contract and the terms of the Task Assignment shall supersede to the extent of any conflicting terms contained within the Contract or Purchase Order.

A sample format for the Task Assignment is included as Attachment "A". Each Task Assignment shall consist of the scope of work to be performed by CONTRACTOR, project schedule, deliverables, any specific provisions and the signatures of authorized representatives of the CITY and CONTRACTOR agreeing to the provisions of the Task Assignment. The CITY will assign projects based upon CONTRACTOR's experience in a given area, ability to meet the time constraints of a given project and/or CONTRACTOR's current workload.

- 3.2 Written Proposals. Upon request by the CITY, CONTRACTOR shall submit to the CITY Project Manager a written proposal, which shall include as appropriate, completion dates, estimated fees and expenses, deliverables and the specific tasks necessary to accomplish the particular project objective. The CITY shall incorporate the proposal into a Task Assignment to be signed and executed by the parties.
- 3.3 Changes in Contract Work. The CITY shall have the right to increase or reduce the scope of the services of CONTRACTOR hereunder at any time and for any reason, upon written notice to CONTRACTOR specifying the nature and extent of such reduction or increases. In the event of an addition to the scope of the services, CONTRACTOR shall be fully compensated for additional work as agreed upon by the CITY and CONTRACTOR. In the event of a reduction to the scope of services, CONTRACTOR shall be fully compensated for the work already performed, including payment of all necessary contract fee amounts due and payable hereunder prior to the receipt of written notification of such reduction in scope and shall be compensated for the work remaining to be done, as determined by the CITY. The work of revising documents as a result of reduction in scope of the project shall be compensated for as a change as provided in this Contract.
- 3.4 Timeliness. It is agreed by both parties that TIME IS OF THE ESSENCE for the completion of work. CONTRACTOR shall complete all assigned projects in accordance with the time of performance specified in the Task Assignment or change thereto.

### **4. DELAY IN PERFORMANCE.**

- 4.1 Delay. Neither Party shall be considered in default of this Contract for delays in performance caused by circumstances beyond the reasonable control of the non-

performing party. For purposes of this Contract, such circumstances include, but are not limited to, abnormal weather conditions, including without limitation, hurricanes; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either the CITY or CONTRACTOR under this Contract (except for the CONTRACTOR's license and authorizations to do business).

4.2 Notice of Delay. Should such circumstances occur the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the nature, cause, date of commencement, and the anticipated impact of such delay or nonperformance, and the efforts being made to resume performance of this Contract.

4.3 In the event of any delay resulting from such causes, the time for performance of each of the parties hereunder (including the payment of invoices if such event actually prevents payment) will be extended for a period of time reasonably necessary to overcome the effect of such delay. Any negotiated delivery dates established during or after a force majeure event will always be discussed and negotiated if additional delays are expected.

## 5. **COMPENSATION.**

5.1 Fee and Expense Schedule. Compensation to CONTRACTOR for services performed shall be as stated in the Task Assignment or Purchase Order. The parties may agree to payment for services on a lump sum or "not to exceed" basis.

5.2 Compensation Increases. CONTRACTOR shall obtain the CITY's approval prior to performing any work which results in the work assignment exceeding the mutually agreed upon scope of services contained in the Task Assignment or Purchase Order.

a. Minor modifications, which extend the deliverable dates and/or increase the project cost by less than 5%, may be approved by the CITY with documentation from CONTRACTOR as specifically requested by the CITY.

b. Major modifications which increase the project cost by more than 5% shall be documented by CONTRACTOR with the following information:

(1) A description of the new work and/or deliverables, that caused a major modification to the work.

(2) An explanation as to why the new work/deliverable was not included in the original scope of work or project assignment or a detailed explanation of other reasons the modification is necessary.

(3) A summary of all prior modifications to the project assignment, and reasons why additional modifications will not be necessary or reasons why additional modifications will be necessary.

(4) A description of any proposed work, which is outside the original work scope or project assignment. These shall be treated as a new project.

c. Upon submittal of the above information, CITY and CONTRACTOR shall mutually agree upon the price modification to complete the project or work assignment. Should agreement between the Parties not be reached, the CITY's decision shall be binding unless CONTRACTOR requests reconsideration through the Dispute Resolution process described in Section 14, below.

5.3 Pay Applications. Requests for payment, submitted by CONTRACTOR to the CITY, shall include the following information (if applicable): Contract number, Task Assignment number, Purchase Order number, item number, job number, description of supplies or services, quantities, unit prices, work location, project representative, job start date, job completion date or other pertinent information which may include a detailed narrative of work completed during the reporting period as described in the Contract Documents.

5.4 Payment Terms. Unless otherwise agreed upon in writing, the CITY's payment terms are net thirty (30) days from receipt of correct application for payment. CONTRACTOR should not submit more than one application for payment per thirty-day period. Any delay in receiving applications for payment, or error and omissions, will be considered just cause for delaying or withholding payment. Application for payment for partially completed work may be allowed with the CITY's prior approval. All partial applications for payment must be clearly identified as such on the application for payment. Any charges or fees will be governed by current Florida Statutes.

5.5 Withholding Payment. The CITY may withhold payment of all or a portion of the requested amount due to failure of CONTRACTOR to comply with project specifications. The CITY shall set forth in writing to CONTRACTOR the reasons for the withholding of payment within 10 days after receipt of CONTRACTOR's application for payment. In the event CONTRACTOR does not agree with the CITY's determination, CONTRACTOR may request reconsideration through the dispute resolution process described in Section 14, below. After CONTRACTOR has complied with the project specifications the CITY will make payment of any withheld amount to CONTRACTOR within 30 days.

6. **TAXES.** CONTRACTOR accepts exclusive liability for the payment of its (i) income, gross receipts, ad valorem, or value added taxes, arising out of work rendered, now or hereafter imposed by any governmental authority, and (ii) payroll taxes or contributions for unemployment insurance, Medicare or Social Security for CONTRACTOR's employees.

7. **PUBLIC RECORDS.** If CONTRACTOR is either a “contractor” as defined in Section 119.0701(1) (a), Florida Statutes, or an “agency” as defined in Section 119.011(2), Florida Statutes, CONTRACTOR shall:

- a) Keep and maintain public records, as defined in Section 119.011(12) of the Florida Statutes, required by the CITY to perform the service.
- b) Upon request from the CITY’s custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the CITY.
- d) Upon completion of the contract, transfer, at no cost, to the CITY all public records in possession of the contractor or keep and maintain public records required by the CITY to perform the service. If the contractor transfers all public records to the CITY upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY’s custodian of public records, in a format that is compatible with the information technology systems of the CITY.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, AS TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, (352) 334-5070, [wrightsa@cityofgainesville.org](mailto:wrightsa@cityofgainesville.org), SCOTT WRIGHT, GAINESVILLE TRANSPORTATION AND MOBILITY DEPT., P.O. BOX 490, STATION 58, GAINESVILLE, FL 32627**

8. **AUDIT OF RECORDS.** CONTRACTOR shall maintain records sufficient to document completion of the scope of services established by this Contract. These records shall be subject at all reasonable time to review, inspect, copy and audit by persons duly authorized by the CITY. These records shall be kept for a minimum of three (3) years after termination of this Contract. Records that relate to any litigation, appeals or settlements of claims arising from performance under this Contract shall be made available until a final disposition has been made of such litigation, appeals, or claims.

9. **INSURANCE.** CONTRACTOR shall maintain the following insurance throughout the term of this Contract:

- Worker's Compensation Insurance providing coverage in compliance with Chapter 440, Florida Statutes.
- Public Liability Insurance (other than automobile) consisting of broad form comprehensive general liability insurance including contractual coverage \$1,000,000 per occurrence (combined single limit for bodily injury and property damage).
- The CITY shall be an additional insured on such Public Liability Insurance and the CONTRACTOR shall provide copies of endorsements naming the CITY as additional insured.
- Automobile Liability Insurance Property Damage \$500,000 per occurrence (combined single limit for bodily injury and property damage).

CONTRACTOR shall furnish the CITY a certificate of insurance in a form acceptable to the CITY for the insurance required. Such certificate or an endorsement must state that the CITY will be given thirty (30) days' written notice prior to cancellation or material change in coverage (but the CITY will accept 10 days' written notice of cancellation for non-payment). The CITY reserves the right to require a limit increase or additional insurance (i.e. explosion, collapse and underground property damage; environmental impairment etc.) if the specific Task Assignment warrants.

10. **INDEMNIFICATION.** CONTRACTOR shall indemnify the CITY, its officials, agents and employees, and hold it harmless from suits, actions, damages, liability and expense in connection with loss of life, bodily or personal injury or property damage arising from or occasioned by any act or omission or negligence or intentional wrongdoing on the part of the CONTRACTOR and other persons employed or utilized by the CONTRACTOR. This indemnification shall survive the termination of this Contract.
11. **SOVEREIGN IMMUNITY.** Nothing in this Contract shall be interpreted as a waiver of the CITY's sovereign immunity as granted under Section 768.28, Florida Statutes.
12. **INDEPENDENT CONTRACTOR.** CONTRACTOR shall be considered an independent contractor and as such shall not be entitled to any right or benefit to which CITY employees are or may be entitled to by reason of employment. Except as specifically noted in the Contract Documents and Task Assignment, CONTRACTOR shall be solely responsible for the means, method, techniques, sequences, and procedures utilized by the CONTRACTOR in the full performance of the Agreement. CONTRACTOR understands and agrees that as an independent contractor, CONTRACTOR and its officers, agents and employees are not entitled to any wages or benefits due to CITY employees.
13. **LEGAL COMPLIANCE.** CONTRACTOR shall secure all licenses or permits required by law or regulations, and shall comply with all ordinances, laws, orders, rules, and regulations pertaining to work under this Contract.
14. **DISPUTE RESOLUTION.**

- 14.1 If a dispute arises out of or relates to this Contract, or the breach thereof, and if the dispute cannot be settled through negotiation, either party may, by giving written notice, refer the dispute to a meeting of appropriate higher management, to be held within 20 business days after giving of notice. If the dispute is not resolved within 30 business days after giving notice, or such later date as may be mutually agreed, the parties will submit the dispute to a mediator. The parties shall mutually agree to the mediator and the costs of the mediator will be born equally by both parties. The venue for mediation shall be in Alachua County, Florida.
- 14.2 Continue Work. During the dispute process, CONTRACTOR shall continue work pursuant to this Contract as instructed by the CITY.
15. **TERMINATION.** CITY shall have the right to terminate this Contract, in whole or in part, without cause, upon seven (7) calendar days' written notice to CONTRACTOR. In the event of such termination for convenience, CONTRACTOR's recovery against CITY shall be limited to that portion of the contract price earned through the date of termination, together with any retainage withheld and direct and immediate termination expenses incurred, but CONTRACTOR shall not be entitled to any other or further recovery against CITY.
16. **GOVERNING LAW AND VENUE.** This Contract and any Task Assignment, Purchase Order, or resulting work or transaction hereunder shall be governed by and construed in accordance with the laws of the State of Florida, without giving effect to the principles of conflict of laws. Venue for all disputes shall be in Alachua County, Florida.
17. **MISCELLANEOUS.**
- 17.1 Severability: In the event that any provision of this Contract is found to be unenforceable, the other provisions shall remain in full force and effect.
- 17.2 Assignability: Neither THE CITY nor CONTRACTOR shall assign any rights or duties under this Contract without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Contract. Nothing contained in this Section shall prevent CONTRACTOR from employing independent consultants, associates, and subcontractors to assist in the performance of the services undertaken pursuant to this Contract.
- 17.3 Third Party Rights: Nothing in this Contract shall be construed to give any rights or benefits to anyone other than the CITY and CONTRACTOR.
- 17.4 Entire Agreement: This Contract and attachments hereto, and any resulting Task Assignments/Work Orders/Purchase Orders constitute the entire agreement between the PARTIES. Modifications to this Contract shall be in writing, signed by both Parties, and incorporated as written amendments to this Contract prior to becoming effective.

17.5 Notices. Any notice, demand, communication, or request required or permitted hereunder shall be in writing, except where otherwise herein designated by telephone, and delivered in person or sent by certified, return receipt requested, United States Mail as follows:

CONTRACTOR: Derek Dykes, President  
Blackwater Construction Services, LLC  
3715 NW 97<sup>th</sup> Blvd., Ste B  
Gainesville, FL 32606

CITY: Scott Wright, Planner II  
Gainesville Transportation and Mobility Dept.  
P.O. Box 490, Station 58  
Gainesville, FL 32627

Notices shall be effective when received at the address as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time to time by written notice.

IN WITNESS WHEREOF, the parties hereto have executed this Contract the day and year written above.

**CITY OF GAINESVILLE:**

Lee R. Feldman

Print Name: Lee Feldman

Title: ICMA-CM

Date: Aug 10, 2020

**BLACKWATER CONSTRUCTION  
SERVICES, LLC:**

Derek Dykes

Derek Dykes (Aug 6, 2020 13:27 EDT)

Print Name: Derek Dykes

Title: President

Date: Aug 6, 2020

APPROVED AS TO FORM AND LEGALITY:

David C. Schwartz

David C. Schwartz (Aug 7, 2020 13:47 EDT)

City Attorney